

**UNITED STATES DISTRICT
COURT WESTERN DISTRICT OF
MICHIGAN SOUTHERN DIVISION**

DAVID McNAIR,

Plaintiff,

Case No.: 1:20-cv-00063-JTN-RSK

Hon.: Janet T. Neff

v.

COLLIN PRATT; SERGEANT CUNNINGHAM;
SERGEANT WYSE;
and INSPECTOR MILLER,

Defendants.

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Matthew T. Tompkins (P62665)
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AFFIRMATIVE DEFENSES

NOW COMES Defendant, COLLIN PRATT (“Defendant Pratt”), by and through his counsel, STRAUB, SEAMAN & ALLEN, P.C., and affirmatively avers as follows:

1. That Defendant Pratt at all times acting in the belief that his actions were lawful and within the bounds of the Constitution and objectively reasonable. Therefore, the Defendant Pratt is entitled to qualified immunity.
2. That any injury suffered by Plaintiff was due to and caused by the failure of the Plaintiff to engage in conduct consistent with the appropriate standard of care and decency under the

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circumstances, and said conduct was the proximate cause of the injury, if any, to Plaintiff.

3. That force, if any, used on Plaintiff was reasonable and necessary under the circumstances to effect the detention of Plaintiff and to protect Defendant Pratt from the unlawful assault and battery committed by the Plaintiff on Defendant Pratt.

4. That the actions of Defendant Pratt were based on probable cause and are therefore privileged.

5. That discovery may reveal that the Plaintiff failed to mitigate damages.

6. That Defendant Pratt is protected by governmental immunity pursuant to Ross v Consumers Power, 420 Mich 567 (1984) and Odom v Wayne County, et al, 480 Mich 1184; 747 NW2d 249 (2008), Docket #133433.

7. That Defendant Pratt is protected by governmental immunity pursuant to 1986 P.A. 175; MCLA 691.1401 et seq.

8. That Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

9. That Plaintiff is estopped from bringing this lawsuit.

10. That discovery may reveal that Plaintiff's claim was filed after the expiration of the applicable statute of limitations.

11. That Defendant Pratt reserves the right to assert and file any affirmative and/or special defenses that may become known through discovery or otherwise.

WHEREFORE, Defendant, COLLIN PRATT, respectfully requests this Honorable Court enter an Order of no cause of action as to Defendant Pratt, together with costs and attorney fees so wrongfully sustained.

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Respectfully submitted,

STRAUB, SEAMAN & ALLEN, P.C.

/s/ Matthew T. Tompkins

Matthew T. Tompkins (P62665)

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Dated: December 23, 2020

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